

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 559 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DAHYABHAI NANABHAI PATEL SINCE DECD.

Versus

STATE OF GUJARAT

Appearance:

MR PRADEEP PATEL for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
MR MITUL K SHELAT for Respondent No. 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 12/12/2000

ORAL JUDGEMENT

1. Dahyabhai Nanabhai Patel deceased through his
heirs Hareshbhai Dahyabhai Patel and others - petitioners
have filed this revision application under section 115 of

the Code of Civil Procedure challenging the judgment and order dated 24th February, 2000 passed by the 3rd Joint Civil Judge (S.D.), Surat in Special Civil Suit No.395 of 1994, wherein the learned Judge was pleased to reject the injunction application filed by the plaintiff and also ordered to status-quo was granted earlier from time to time was vacated.

2. The facts giving rise to this application are as under :-

2:1 The petitioner no.1 is a father and petitioner nos.2 to 5 are real brothers and petitioner no.1 (since deceased) was an agriculturist and cultivating since long. The petitioner nos.6 and 7 are owners of the land bearing Survey No.234 in the seem of village Moti Shiholi. It was the case of the petitioners that the said land was of a new tenure land.

2:2 On 14th October, 1988, by registered sale-deed the said land was sold by Shri Dullabhai Rupabhai Patel and other - petitioner nos.6 and 7 to the petitioner nos.1 to 5 and on very that day petitioner nos.1 to 5 become absolute owners of the said land.

2:3 Shri U. A. Trivedi, learned AGP on behalf of respondent No.1 and Mr.Shelat, learned advocate on behalf of the respondent No.3 have stated that in this case, the Government has decided to acquire the said land under the provisions of Land Acquisition Act, 1984 (hereinafter be referred to as "the Act"). For that purpose, the State Government has issued notification under section 4(1) of the Act on 22nd September, 1988. Thereafter, the Government has also issued notification under section 6 of the Act on 18th July, 1988. Thereafter, after completing the due procedure under the Act the award came to declare on 26th September, 1999.

3. The learned counsel for the respondent stated that the petitioners - original plaintiffs being aggrieved by the land acquisition proceedings filed a writ petition bearing Special Civil Application No.3589 of 1994 before this Court. This Court (Coram : A.P.Ravan & R.Balia,JJ.) by its order dated 11th July, 1994 after going through the records and the affidavit-in-reply filed by the Government was pleased to reject the said writ petition. The said order is taken on record.

4. The learned counsel for the respondeat further stated that against the award dated 26th September, 1991,

the original plaintiff has filed reference application before the District Court under the provisions of the Act and the said reference still pending.

5. The learned counsel for the respondent stated that in this case, the petitioners have challenged the proceedings of the Land Acquisition Act and the Court has rejected the status-quo order and injunction application and against the said order, the present revision Application is filed. It was contended by the learned counsel for the respondent that in any view of the matter, the Civil proceedings are not maintainable on three grounds : (i) as already the land Acquisition proceedings was initiated before the Division Bench of this Court and the same was rejected. (ii) the civil proceedings are not maintainable at Law, (iii) It was further contended that when the award was already declared on 26th September, 1991 and the same was challenged before the District Court also. Thus, in any view of the matter, the proceedings are not maintainable.

6. The learned counsels for the respondents have cited the judgments of the Hon'ble Supreme Court in the case of STATE OF BIHAR v/s. DHIRENDRA KUMAR AND OTHERS, reported in AIR 1995 S.C. 1955 and LAXMI CHAND AND OTHERS v/s. GRAM PANCHAYAT, KARARIA AND OTHERS, reported in AIR 1996 S.C. 523 and S. P. SUBRAMANYA SHETTY AND OTHERS v/s. KARNATAKA STATE ROAD TRANSPORT CORPORATION AND OTHERS, reported in AIR 1997 S.C. 2076 and also the judgment of the Division Bench of this Court in the case of STATE OF GUJARAT v/s. JIV ABHAI JORABHAI RABARI & ORS, reported in GLR 39 1993 (3) 2505.

6:1 The Hon'ble Supreme Court has held in para-2A in the case of State of Bihar v/s. Dharendra Kumar and others, reported in AIR 1995 S.C. 1955 as under :-

"We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil Court to take cognizance of the case under S.9 of C.P.C. stands excluded, and a civil Court has no jurisdiction to go into the question of the validity or legality of the notification under S.4, and declaration under S.6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable. When such is the situation, the finding of the trial Court that there is a prima facie triable issue is unsustainable."

6:2 The Hon'ble Supreme Court has also held in para-4 in the case of S. P. Subramanya Shetty and others v/s. Karnataka State Road Transport Corporation and others, reported in AIR 1997 S.C. 2076 as under :-

"In view of the settled legal position that the notification had become final and the proceedings had attained finality, the Civil Suit was not maintainable. This Court has repeatedly held that a Civil Suit relating to acquisition proceedings is not maintainable and by implication, cognizance under Section 9, CPC, is barred. The Court cannot issue mandatory injunction against the State to denotify the acquisition under Section 48. Therefore, the question of granting an injunction against the authority from proceedings in accordance with the law does not arise. The High Court, therefore, was right in refusing to grant injunction. The Court cannot compel the Government to withdraw the notification under Section 4(1) of the Act. It is for the Government to consider the same on merits and it keeping in mind subservience of public interest. In view of the fact that notification was upheld by this Court and has become final, the Government cannot retract from the steps taken".

This Court has held in the case of State of Gujarat v/s Jiv Abhai Jorabhai Rabari & Ors, reported in GLR 39 1993 (3) 2505, in para-10 at page-2508 as under:-

"In view of the clear decision of the Supreme Court, civil Court has no jurisdiction. Therefore, if the proceedings of the suits are continued, the public cause would suffer. In such circumstances, this Court is perfectly justified in invoking the extraordinary jurisdiction conferred under Art.226 of the Constitution. We hold that the order passed by the Civil Court is without jurisdiction and the same is hereby quashed. The Special Civil Application is allowed. Rule is made absolute, with no order as to costs."

7. The learned counsel for the respondent further stated that in any view of the matter, in this case the award was already declared on 26th September, 1991 and in view of the judgment of the Hon'ble Supreme Court in the case of MUNICIPAL COUNCIL, AHMEDNAGAR AND ANOTHER v/s. SHAH HYDER BEIG AND OTHERS, reported in 2000 AIR SCW 197.

After considering the earlier judgment the Hon'ble Supreme Court has held in para-(17) at page-201 as under :-

"In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder."

8. I have considered the facts and proceedings of the case is concerned and in view of the judgment of the Hon'ble Supreme Court and the Division Bench of this Court, the civil Court has no jurisdiction to consider the legality and validity of the land acquisition proceedings and, therefore, the order of the learned Judge is rejecting, the injunction application is legal and valid in this behalf. I do not find any force in contentions of the learned counsel for the petitioner, when he states that though the order of the learned Judge is legal and valid. The learned counsel has stated that he desired to challenge the subsequent proceedings in this Civil Revision Application. In my view, the learned counsel for the petitioner cannot be permitted to challenge subsequent order, in view of the fact that when the Civil Court has no jurisdiction. Over and above, present civil proceeding is not maintenance as this Court in a proceeding under Article-226 of the Constitution of India has rejected the petition. When once award reference proceeding are pending then also Civil Court has no jurisdiction.

9. In my view, in view of the judgment of the Hon'ble Supreme Court, the present revision application is required to be rejected. Interim relief granted earlier dated 19th June, 2000 continued time to time is vacated in this behalf. Notice is discharged.

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(vrp)*